

trucks, and the officer was a David Singler, Public Utility Officer, which he couldn't make it today, because he had to go to a funeral.

* * * * *

(11) Q. Now, then, at this time, did you observe the vehicle operated by Clarence Ward? A. Yes, sir, I did.

Q. All right. When did you first observe that? A. When I first saw it is when it entered the village limits in the left-hand lane.

Q. Heading east? A. Heading east, yes, sir.

Q. About how far away would that be? A. From where I was standing? About 1200 feet.

Q. And then, will you describe what happened? A. Yes, sir, I will. May I check my notes?

* * * * *

(12) A. I have a diagram here. It is the best way to refresh my memory as it was quite a while ago. I was standing at the old cross-over of Route 20, on the side of the road when I saw a truck, later identified as Mr. Ward driving, enter the city limits at the left-hand lane, and continued in the left-hand lane, and continued even though I was waving at him, and I was standing in the center of the line. There were no other vehicles on the road at the moment except for the trucks on the side of the road.

The gentleman driving the truck did not stop when I waved at him. He continued all the way down to Route 99, made a left turn into the Farm Restaurant. Do you wish to check my notes?

* * * * *

(13) Q. Now, you stated that you waved the truck driver? A. Yes, sir.

Q. What manner did you wave the truck driver to stop? A. You always wave your arms like this, and you put a hand up and you point to the ground, which means stop. That is standard procedure.

Q. Did the defendant stop? A. No, he did not.

Q. All right, what happened then? A. The defendant passed me, and I ran to the police car which is parked on the median strip, and went in pursuit.

Q. Where did you stop the defendant at? A. I didn't stop him. He stopped on his own at the Farm Restaurant. He never did stop for me.

(14) Q. At the Farm Restaurant, did you talk to the defendant there? A. Yes, I did.

Q. What happened there? A. The first question I asked is, why he didn't stop.

Q. Where were you at this time? A. When asking him?

Q. Yes. A. Standing outside the doorway at the Farm Restaurant.

Q. The defendant was out of his truck at this time? A. Yes, sir, he was.

Q. All right. Now, prior or going back, prior to this, did you notice anything about the truck when the truck went by? A. Yes, sir, I did.

Q. What was that? A. There was no marking on the door.

* * * * *

(15) Q. Well, what type of markings do they usually have on the tractor? A. Either trucks are supposed to have a Public Utilities Commission sticker or interstate commerce or intrastate, or if the truck is not for hire, it should have "not for hire" on it.

Q. Did this truck have any markings on it at all? A. As far as Public Utilities, no.

Q. Then, you had followed the defendant to this restaurant? A. Yes, sir.

Q. And you were talking to him in the front of the restaurant? A. Yes, sir.

(16) Q. What was the conversation there? What did you say and what did he say? A. I asked him why he didn't stop. He said he couldn't stop it.

Q. All right. Then, what? A. And—the conversation went on. Asked him for his driver's license. He said he didn't have to show me anything as he was on private property.

Q. All right. Did he show you his driver's license?
A. No, sir, he did not.

Q. All right. Then what happened? A. I stood there and listened to him as he gave conversation, so to speak. I advised him that he did go through a Public Utility check, and he was required by law to stop. All vehicles are required to stop if they are for hire or not.

Q. All right. Then what did you ask him? A. I asked him for his driver's license again, and he wouldn't show it. I asked him for the bills and safety equipment and he wouldn't show it.

* * * * *

(19) Q. Then what did you do? A. I went back to the safety check.

Q. All right. And did Mr. Ward appear at the police station that day? A. No, sir, he did not.

* * * * *

CROSS EXAMINATION OF LEONARD CONNERS.

By Mr. Schwartz:

* * * * *

(24) Q. How many charges did you file against the defendant after the whole episode which you related on your direct examination? A. Two.

Q. Two? A. Yes, sir. I believe two. That is all I know about.

Q. What were the charges? A. The one now, is failing to comply with the lawful order of the police officer, and the other one is failing to produce an Ohio, valid Ohio driver's license.

Q. There was not a third charge filed? A. No, sir. None that I know of.

Q. Did you charge the defendant under the Ohio Revised Code or under the Monroeville Ordinance? A. Charged him under our village ordinance.

Q. Do you know whether there is a comparable code section? A. You mean, if there is an ordinance or not?

Q. If there is an Ohio statute, an Ohio Revised Code?

A. Pertaining to these two?

Q. Yes, sir, that might also be used? A. I wouldn't know, sir.

(25) Q. Do you ever file charges against anybody under the Ohio Revised Code? A. At times, yes, sir.

Q. Usually under the Monroeville City Ordinances?

A. I don't follow that.

Q. Well, there are times, aren't there, when certain behavior is prohibited, both by the Ohio Revised Code and the Ordinance of the Village of Monroeville? A. If the man or lady, or such, violates in the village, I first charge under the village ordinance. If there is no village ordinance, then, I go to a state ordinance, and upon doing so, I check with the city solicitor and take his advice on the matter.

Q. And why do you first charge under a village ordinance? A. Because I am employed by the village.

Q. Were you instructed by anyone to follow that procedure? A. I took an oath to uphold laws of the village.

Q. Had anyone instructed you to prefer charges under the ordinances rather than under State Code, whereas, an alternative? A. I believe I am duty-bound to uphold the laws of the village.

Q. But has anyone instructed you to exercise that interpretation?

The Witness: Do I have to answer that? (26) I feel that is—

The Mayor: I feel you have given a valid answer.

Mr. Schwartz: He hasn't.

The Witness: I am not going to incriminate myself.

Mr. Schwartz: He hasn't answered the question whether anyone has instructed him.

The Witness: I don't care for the question. May I not answer?

Mr. Hite: Well, I will object to the question on the basis that it has already been answered, and that it is a confusing question. Not a proper question.

Mr. Schwartz: I will restate it then in clear form.

Q. Have any persons superior to you ever instructed you with regard to preferring charges under the village ordinances as opposed to the State Code?

The Mayor: May I answer that question, counsellor?

Mr. Hite: No.

The Mayor: All right. You carry on.

The Witness: Do I have to answer (27) that one?

The Mayor: You are the man that is being questioned. You handle it as you see fit.

Mr. Hite: First, I object to it on the basis that I think it is immaterial to this action.

Mr. Schwartz: I think it is relevant in terms of what we are exploring the hearing as to the bias of the witness and the whole issue in this case is going to be credibility of the prosecution witness, and I think the reasons for his behavior there on his credibility and his bias, and if that is the reason why—

Mr. Hite: Well, my objection, basically I believe this is, I think, the question has been answered a number of times by the prosecuting witness, the Chief of Police, in that it is his duty to carry out the mandates of the ordinances of the village first, and then, to the State of Ohio, or any ordinance or any situations which the village laws do not employ, and there are those cases where the statutes are strictly the law if there is no ordinance involved, and can't be any ordinance on them. But, in this situation, we do have two, I believe, we have a State statute as well as the (28) ordinance of the village.

Mr. Schwartz: And I am trying to explore the reasons why he made a particular selection.

Mr. Hite: I believe he answered that question.

Mr. Schwartz: It is your ball.

The Mayor: If you are trying to establish that the Chief of Police would be brought in to this office

and advised to go out and make an arrest, I would have to, on the basis of the village ordinance, yes, they were instructed. If there is a clear-cut violation, they are to make their arrest. But, in a borderline case, forget about it.

* * * * *

(35) Q. You never saw his driver's license? A. Not in person. I never had it in my hand and examined it (36) in person.

Q. Did you ask the lady who had it?

Mr. Hite: I am going to object to this testimony. I think this is irrelevant, because this is another charge, and we are now here on this one.

The Mayor: We are only interested in one charge.

Mr. Schwartz: Your Honor, on direct examination he went through the whole thing and I think that opens the door. I am entitled to go into it on cross examination, and I think the whole transaction is relevant to the credibility of this witness who, as a result, animosity that developed between the witness and the defendant in the events that took place at the Farm Restaurant and I think this witness has a bias against this defendant, and that is what I am attempting to explore.

The Mayor: This charge we are interested in this one. As an outgrowth of an event that happened prior to the Farm Restaurant. This Court isn't interested in anything that happened at the Farm Restaurant. We are interested in failure and refuse to comply with a lawful order of a (37) police officer, Ordinance 47-12, Section 2 of the Village of Monroeville, and this is a Village Ordinance, and that is all I am interested. What this man did or did not do beyond that point, I could care less. I sit here as an impartial judge, and I care not what this man does. The only thing I want to see is that this case is brought to a conclusion, and we can dispense with

the stalling and the haggling. This is what I want to do, and that is all I want to do. This man isn't going to make me one cent richer or one cent poorer. He is an unentity as far as I am concerned.

Mr. Schwartz: Nevertheless, the ensuing events do relate to this witness's credibility, and that is my only purpose.

The Mayor: Are you going to sit here and are you going to challenge the credibility of the police officer that gives testimony under oath?

Mr. Schwartz: Yes.

The Mayor: You are going to challenge the credibility of this police officer?

Mr. Schwartz: Yes.

The Mayor: Under oath?

Mr. Schwartz: Yes.

(38) The Mayor: This man? Very well, you may proceed.

* * * * *

(45) Q. By whom were you selected as chief? A. I believe as a common knowledge, I was recommended by the past chief.

Q. Who made the appointment? A. I believe the Council did. That is the way it works.

The Mayor: On recommendation of the Safety Committee to the Mayor, and I made the appointment. By recommendation of the Safety Committee.

Q. Does anyone have the power to remove you? A. I would imagine so.

Q. Who?

The Mayor: I do.

* * * * *

(46)

RE-DIRECT EXAMINATION OF LEONARD CONNERS.

By Mr. Hite:

* * * * *

(47) Q. Now, in reference where you were stopping the trucks, the trucks were lined up on this point on this Exhibit from the village limits line to about where you were standing; were there any trucks between you and it?
A. None that I know of.

Q. Ninety-nine? A. None that I know of.

Q. So, this whole area of some 1700 feet, the defendant could pull his truck off the shoulder? A. I believe so, yes, sir.

* * * * *

(53) The Mayor: In lieu of the evidence that is on the record and of the testimony, the testimony of the Chief under sworn statement, it is the finding of this Court that Clarence Ward is, (54) in fact, guilty of the violation of Ordinance so charged, and that the fine be \$50 and court costs as assessed.

* * * * *

(1)

Case No. 34764.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, COUNTY OF HURON.

VILLAGE OF MONROEVILLE,

Plaintiff-Appellee,

vs.

CLARENCE WARD,

Defendant-Appellant.

TRANSCRIPT

[Of Hearing on Defendant's Affidavit of Prejudice in Mayor's Court No. 68-745 and Appeal in No. 68-744].

March 20, 1969.

THE HONORABLE ROBERT J. VETTER, JUDGE OF THE
COURT OF COMMON PLEAS, PRESIDING.

APPEARANCES:

For Plaintiff-Appellee:

MR. FRANKLIN D. ECKSTEIN,
Solicitor,
Village of Monroeville,
Monroeville, Ohio.

For Defendant-Appellant:

BERKMAN, GORDON AND KANCELBAUM,
by MR. NIKI Z. SCHWARTZ,
1320 Superior Building,
Cleveland, Ohio.

* * * * *

(3)

LADONNA CHRISTMAN, of lawful age, who being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHWARTZ.

Q. Would you state, for the record, your name, please? A. LaDonna Christman.

(4) Q. And are you an officeholder in the Village of Monroeville? A. Yes, I am.

Q. And what office do you occupy? A. Village clerk and treasurer.

Q. What are your duties in this capacity? A. I keep all the records of the village and take the minutes, and so forth, of all meetings, and board meetings, and council meetings.

Q. Do you keep the financial records for the village? A. Yes, I do.

Q. Do those records reveal the annual revenue to the general fund? A. Yes, they do.

Q. And do they reveal the amount of revenue that is derived from fines, fees, and costs in Mayor's Court? A. The general fund are you speaking of?

Q. Yes. A. Yes, and they reveal a portion of some figures to the street fund.

Q. At my request have you made a review of those figures for the past few years? A. Yes, I have.

Q. I wonder then, from your review of the records, tell us, please, for the years 1964 through 1968, the revenue for each year (5) to the general fund and the amount of that revenue that is derived from fines, fees, and costs from the Mayor's Court. A. In 1964 the general fund had a grand total of \$46,355.38 and of that amount \$23,589.50 was from fines and costs. 1965, grand total receipts were \$46,752.60, in this portion \$18,508.95 was from fines and costs. 1966, \$43,585.13 grand total receipts, of this portion \$16,085.00 was fine and costs. 1967, \$53,931.43 grand total receipts, of this \$20,060.65 was fine and costs. 1968, \$52,995.95 grand total receipts, of this portion \$23,429.42 is fine and costs.

Q. As the village clerk and treasurer, you are generally familiar with the operation of the government of the Village of Monroeville? A. With my office, yes.

Q. Do you know whether or not the village has a charter? A. They do not.

* * * * *

(6) Q. As the village clerk you are the custodian of the village ordinances? A. Yes, I am.

Q. At my request have you made copies of some of those ordinances? A. I have made copies of two ordinances.

Q. Referring, first of all, to Ordinance Number 59-9— A. Yes, I have a copy.

Mr. Schwartz: (To the reporter:) If you would, please mark this "Defendant's Exhibit A."

(Thereupon the above referred to "Ordinance Number 59-9" was marked "Defendant's Exhibit A" for identification.)

(7) Q. I am showing you now Defendant's Exhibit A. Is this a true and accurate copy, to the best of your knowledge, of Monroeville Ordinance Number 59-9? A. Yes, it is.

Q. This is (Reading) "An ordinance providing for the employment of Midwest Consultants, Incorporated, of Sandusky, Ohio, to investigate the effects of the county court law on the village." (End reading)

Mr. Schwartz: I'd like to introduce that at this time.

Court: I think I would like to talk to counsel in chambers.

Mr. Schwartz: I move to offer that in evidence.

Court: I will admit it for what it is worth.

* * * * *

(10) Court: You are an elected official?

The Witness: Yes, I am.

Court: How much money, in those years, did you turn over to the Law Library fund?

The Witness: In 1964, we turned over \$724.08.

(11) In 1965, \$386.95. 1966, \$75.60. 1967, \$315.73. 1968, \$43.99.

* * * * *

DAVID SINGLER, of lawful age, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. ECKSTEIN.

(11) Q. For the record, would you state your name?

A. David Singler.

Q. By whom are you employed? A. I am employed by the Public Utilities Commission of the State of Ohio.

Q. Where is your home office; that is where do you work from? A. Well, the only office we have is in Columbus.

(12) Q. I see. What part of the State do you work in as a Public Utilities Commission Officer? A. Well, I have six counties that I am in charge of, and three more that I cover, in the northern part of the State.

Q. Do you have any idea of what surrounding communities in this area have an ordinance similar to the one Monroeville has, which was offered in evidence, that prevents truck drivers from violating the Public Commission laws? A. Attica has one. Strongsville has one. Independence has one. Willoughby, I believe, has one.

Q. In other words, would you say that this is not a unique situation in Monroeville? A. No. Throughout the State there are quite a few that have this.

Q. What are some of the main characteristics of the communities that have this type of laws? A. Well, they are all small villages or corporations that have main highways going through them where there is a considerable amount of traffic, that is, truck traffic that would come under the Public Utilities jurisdiction.

Q. Is it true that Ohio law doesn't provide for you to make an arrest? A. That's right.

Q. Would you say it's a policy of the Public Utilities Commission to encourage certain villages to pass certain ordinances? A. That's right. We try to get villages to pass ordinances to help us in our work since we have no arrest power. If we go into a place that has no ordinance, the only way we can have an arrest—we file an affidavit and have a warrant issued.

Q. In other words, as the Ohio Legislature has set this system up, but for this type of ordinance you would have to rely on the State Highway Patrol, wouldn't you? A. Yes.

Q. The Court, I am sure, can take judicial notice that wouldn't be adequate. A. They are shorthanded with what they have got to do without having these additional arrests. I mean, there just aren't enough to have them to go along with us continually—daily.

Q. When you have a check in Monroeville, do you initiate that check? A. Yes.

Q. About how frequently do you have those checks? A. Well, it varies, maybe once in two months, one in three months, one in a month.

Q. Does it depend on the weather? A. Yes, weather has a lot to do with it.

(14) Q. In other words, you are concerned with safety? A. Yes. If the road conditions are hazardous, we have no checks.

Q. Who is in charge of these checks if it is done in Monroeville? A. We are in charge of the check.

Q. Do you actually do the investigation? A. Yes, we do the investigation, check for all defects, illegal loads and anything that would arise.

Q. And when you are doing these checks, if you observe that one of the laws is being violated, then you tell the policeman at hand? A. We refer him to the policeman, yes.

Q. Then that policeman, I suppose, does the arrest procedure? A. That's right.

Q. Do you have any idea of how many—roughly how many arrests are made in Monroeville each year for offending this statute—this ordinance? A. I would have no idea.

Q. On any given day when you are making a safety check, could you give an estimate how many arrests would be made? A. It could vary between five, fifteen, or twenty.

(17)

THEREUPON AFTER THE ARGUMENT OF COUNSEL:

Court: As far as the affidavit for disqualification of the mayor, that is overruled, and the defendant is taxed the costs.

In this other case, I merely want to say that I have no desire to make new law or to eliminate all the mayors' courts in the State of Ohio; therefore, the appeal is denied.

**OPINION OF THE COURT OF APPEALS FOR
HURON COUNTY, OHIO.**

VILLAGE OF MONROEVILLE, *Appellee*,

vs.

WARD, *Appellant*.

(Nos. 805 and 806

Decided December 31, 1969)

[Cite as *Monroeville v. Ward*, 21 Ohio App. 2d 17.]

[The Opinion of the Court of Appeals is reprinted beginning at page 34 of the Petition for Certiorari.]

**JUDGMENT AND OPINION OF
THE SUPREME COURT OF OHIO.**

VILLAGE OF MONROEVILLE, *Appellee*,

vs.

WARD, *Appellant*.

(No. 70-135—Decided July 14, 1971)

[Cite as *Monroeville v. Ward* (1971), 27 Ohio St. 2d 179.]

[The Judgment and Opinion of the Supreme Court of Ohio are reprinted beginning at page 15 of the Petition for Certiorari.]

OHIO REVISED CODE.**§ 733.48 Legal counsel for villages.**

When it deems it necessary, the legislative authority of a village may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel.

§ 1905.25 [Appeal; trial de novo.]

An appeal from the mayor's court to the municipal court or county court shall proceed as a trial de novo.

§ 2937.08 Action on pleas of "not guilty" or "once in jeopardy" in misdemeanor cases.

* * * * *

Upon the entry of such pleas to a charge of misdemeanor in a court not of record, the magistrate shall forthwith set the matter for future trial or, with the consent of both state and defendant may set trial forthwith, both pursuant to Chapter 2938. of the Revised Code, provided that if the nature of the offense is such that right to jury trial exists, such matter shall not be tried before him unless the accused, by writing subscribed by him, waives a jury and consent to be tried by the magistrate.

* * * * *

§ 2938.13 Responsibility for prosecution.

In any case prosecuted for violation of a municipal ordinance the solicitor or law director, and for a statute, he or the prosecuting attorney, shall present the case for municipality and state respectively, but either may delegate such responsibility to some other attorney in a proper case, or, if the defendant be unrepresented by counsel may with leave of court, withdraw from the case. But the magistrate or judge shall not permit prosecution of any criminal case by private attorney employed or retained by a complaining witness.

§ 2938.15 Rules of evidence and procedure.

The rules of evidence and procedure, including those governing notices, proof of special matters, depositions, and joinder of defendants and offenses set forth in Chapter 2945. of the Revised Code, which are not, by their nature, inapplicable to the trial of misdemeanors, shall prevail in trials under Chapter 2938. of the Revised Code where no special provision is made in such chapter, or where no provision is made by rule of the supreme court adopted pursuant to section 2937.46 of the Revised Code.

Supreme Court of the United States

No. 71-496 ----, October Term, 1970

Clarence Ward,

Petitioner,

v.

Village of Monroeville, Ohio

Order allowing certiorari. Filed January 24 -----, 1972.

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio
is granted.